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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 1208

CLARA I. MAYS, *Petitioner,*

v.

WILLIAM T. BURGESS, FRANCES E. BURGESS, H. P. GUMBRECHT, AGNES B. MULARKEY, MARY C. CARLETON, *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

JAMES A. COBB,
Washington, D. C.

GEORGE E. C. HAYES,
Washington, D. C.

LEON A. RANSOM,
Washington, D. C.

WILLIAM H. HASTIE,
Washington, D. C.,
Attorneys for Petitioner.

SPOTTSWOOD W. ROBINSON, III,
Richmond, Va.
THURGOOD MARSHALL,
New York, N. Y.
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, Clara I. Mays, one of the appellants below, respectfully prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the District of Columbia (R. 48) which affirmed a final judgment for the respondents, plaintiffs in the original suit, in the District Court of the United States for the District of Columbia (R. 26).

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

1. The Suit and the Parties Thereto.

This proceeding originated as a suit in equity against the petitioner and her immediate predecessors in title for the purpose of setting aside a deed to petitioner because of the provisions of a contract between one of the petitioner's remote predecessors in title and certain neighboring land owners, including three of the respondents and a predecessor in title of the remaining respondent.

Petitioner is a Negro. Prior to the present suit she purchased and became the occupant of an improved parcel of residential property in the District of Columbia, described as Number 2313 First Street, Northwest. She is the holder of record title to the property in fee simple and occupies it as her home. Her grantors and immediate predecessors in title were named as co-defendants in the suit. In this action, the respondents sought and obtained a decree setting aside the deed and conveyance to the petitioner and enjoining her from ownership, use and occupancy of the said premises.

2. Theory and Factual Basis of the Suit.

The essential facts are undisputed. On or about September 1, 1925, the owners of thirty-two parcels of land constituting one city block and located on the east and west sides of First Street, Northwest, between Adams and W Streets, in the District of Columbia, subscribed to a contract under seal, providing in its essential parts as follows:

> "The parties hereto do hereby mutually agree, promise and covenant, each with the other and for their respective heirs and assigns, that no part of the land now owned by the parties hereto, a more definite description of said property being given after the respective signatures hereto, shall ever be used or occupied by, or sold, conveyed, leased, rented or given to

> Negroes or any person or persons of the Negro race or blood. This covenant shall run with the land and bind the respective parties hereto, their heirs and assigns, for the period of twenty-one years from and after the date of these presents." (R. 4.)

This contract was not a part of or incidental to any conveyance of land. It was recorded in the Land Records of the District of Columbia. Petitioner's property, the subject-matter of the present dispute, is within the area which the contract purports to restrict.

One of petitioner's remote predecessors in title signed the contract. Petitioner purchased the property with knowledge of the existence of the contract. Petitioner has occupied the premises continuously since February 21, 1944.

The area in which the property is located is residential in character. However, most of the parcels covered by the contract in question are no longer occupied by the signatories to the instrument, but are now used as apartment buildings and rooming houses (R. 31). The property in this area has a greater monetary sale value to colored purchasers than to white purchasers (R. 31). The contiguous areas to the south and west are unrestricted and contain numerous parcels owned and occupied by Negroes (R. 25).

B.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code (28 U. S. Code, Sec. 347 (a)).

The judgment sought to be reviewed was entered in the Court of Appeals on January 29, 1945. Petitioner's application for a rehearing was denied on February 16, 1945. The opinion of the Court of Appeals is filed as part of the Record herein (R. 36) but is not yet officially reported.

C.

QUESTION PRESENTED.

Under the Constitution and laws of the United States and consistent with the public policy of the United States and the principles of equity jurisprudence may a court of the United States enjoin a Negro from the use and occupancy of her home and set aside a conveyance to her, solely because of a contract by a remote predecessor in title, to which neither the Negro purchaser nor her grantor was party, purporting to prohibit the disposition of that property to or its occupancy by Negroes?

D.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

1. The Circuit Court of Appeals for the District of Columbia has given improper construction and effect to the decision of this court in *Corrigan* v. *Buckley*, 271 U. S. 323.

2. This case presents a question of general importance which should be, but has not been settled by this Court; namely, whether landowners in the District of Columbia may, by their contract not incorporated in any instrument of conveyance, restrain successors in the chain of title from sale or other dispositions of the land to members of the Negro race, and thus exclude Negroes from the future use, occupancy or ownership thereof, because of their race or color.

3. This case presents a question of substance relating to the Constitution and laws of the United States; namely, whether a racial restriction on alienation and acquisition of land which, under the decision of this Court in *Buchanan* v. *Warley*, 245 U. S. 60, would be unconstitutional if imposed by a legislature, may be imposed by judicial action upon a grantor and a grantee, who have not consented to such restriction.

Each of the foregoing questions was seasonably and properly raised in the District Court and in the Court of Appeals for the District of Columbia, and was considered and decided adversely to the petitioner herein in both of said courts. However, of the three Justices who heard the appeal, only one, Chief Justice Groner, concluded that petitioner's contentions were unsound. Justice Edgerton, in a dissenting opinion, agreed with all of the contentions upon which this petition is predicated. Justice Miller, while concurring with the result reached by the Chief Justice, based his concurrence upon *stare decisis*, expressly recognized the merit of Justice Edgerton's dissent, and stated that "if judicial reinterpretation of the law is now in order, it is the function of the Supreme Court, as the highest Court of the District of Columbia, so to advise us."

In support of the foregoing grounds of application your petitioner submits herewith the accompanying brief setting forth in detail the precise facts and arguments applicable thereto. Petitioner further states that this application is filed in good faith and not for purposes of delay.

CONCLUSION.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia should be granted.

JAMES A. COBB,
Washington, D. C.

GEORGE E. C. HAYES,
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